

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:09od-121

OAHU

Grant of Term, Non-Exclusive Easement to Burt T. Kaminaka Trust and Miriam K. Kaminaka Trust for Boat Ramp, Seawall, Gazebo and Lanai Purposes, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-030:seaward of 019.

APPLICANT:

Burt T. Kaminaka Trust and Miriam K. Kaminaka Trust

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-030:seaward of 019, as shown on the attached map labeled Exhibit A.

AREA:

601 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing boat ramp, seawall, gazebo and lanai purposes over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit, Office of Conservation and Coastal Lands (OCCL) staff observed the subject encroachments and determined it appeared to be built before 1974, prior to the enactment of the EIS law. This action merely addresses the legal status of a pre-existing condition and is therefore exempt from Chapter 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine one-time payment.

Note: Applicant has provided the required map and description of the encroachment area.

REMARKS:

During the shoreline survey process, the subject encroachment was located by the shoreline survey. During the research of the subject encroachment, it is believed that the encroachment was constructed before 1967 as supported by aerial photos.

Office of Conservation and Coastal Lands (OCCL) reviewed the request, and determined that the subject matter is not considered a Conservation District violation and will not be required to seen an after-the-fact Conservation District Use Permit. Further, OCCL does not object to an easement request being processed. A copy of OCCL's letter is attached as Exhibit B.

Department of Health, Division of Aquatic Resources, State Historic Preservation Division, Board of Water Supply, Department of Parks and Recreation, Department of Planning and Permitting, and Department of Facility Maintenance have no comments/objections to the request.

Commission on Water Resource Commission, Department of Hawaiian Home Lands, and Office of Hawaiian Affairs have not responded as of the suspense date.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns, and staff does not have any objections to the request.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-7-030:019, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Burt T. Kaminaka Trust and Miriam K. Kaminaka Trust covering the subject area for boat ramp, seawall, gazebo and lanai purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

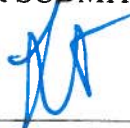
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-7-030:019, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



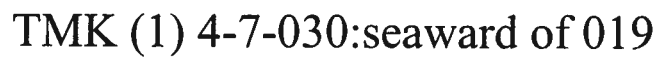


EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

RECEIVED
LAND DIVISION

2010 FEB 10 A 8:52

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAEE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref.: OCCL: DE

Encroachment: OA-10-03

February 8, 2010

Miriam Kaminaka

Honolulu Hawaii 96817

SUBJECT: Shoreline Encroachment (Seawall, Boat Ramp, Filled land and Pier/dock) at TMK
(1) 6-1-08:23 Fronting TMK (1) 4-7-30:19 [REDACTED] Kaneohe, HI.

The Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources (DLNR) has received the request for review of the subject shoreline encroachment. The OCCL has reviewed the supplied shoreline encroachment information provided and researched historical shoreline information on the subject property to evaluate the environmental impact of granting an easement for the subject encroachment. The encroachment in question includes a concrete and rock seawall, concrete boat ramp, Gazebo, Lanai and pier located makai of the property line and within state-owned land.

The subject property is located in Kaneohe Bay, Oahu. A recent survey map by James Thomson dated November 20, 2008 shows a 601 ft² portion of the seawall and fill encroaching onto state land (Figure 1). This was not a state certified shoreline but delineates the improvements and the encroaching area. According to the information provided to the DLNR, it is believed construction of the seawall began before 1967 as illustrated by provided historical aerial photographs of the same date. In the aerial photograph it is apparent the subject improvements were established in place. Additional evidence of non-conforming status is suggested by the complete development of the property and apparently mature landscaping in 1967 suggesting the improvements were constructed well before 1967 (Figure 2).

Conservation District Violation

Based on the information available, it appears the subject improvements were initiated before the establishment of the Conservation District in 1964. As a consequence, DLNR does NOT consider the subject encroachments a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application.

EXHIBIT "B"

BLNR Shoreline Encroachment Policy

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the DLNR developed a "Shoreline Encroachment Information Sheet" that is intended to provide the DLNR with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of DLNR staff. Based on the information provided the DLNR has made the following determinations with regard to the subject improvements:

Resource Assessment:**Surrounding Land Uses:**

The surrounding uses are urban residential development. There are no public access right of ways in the immediate area. Existing public access to and along the shoreline in this area are non-existent and the subject improvements do not significantly affect this.

Beach and Marine Resources:

The beach and marine resources are poor with no recreational public resources available. The marine environment is fair with the clear, calm waters nearshore resulting in some public recreational opportunities such as fishing or swimming but these severely limited by access.

Public Access:

There is no direct public access to the shoreline at the site of the subject improvements. The region has no lateral access provided. There are no existing public beach access easements identified in the immediate area.

Assessment of Removing the Encroachment:**Beach Resources:**

The removal of the seawall and subject improvements would have a slightly beneficial impact on beach resources by providing needed accommodation space for a beach and improving lateral public access. However the encroaching seawall serves as an integral part of the whole structure that provides stability and retention of the fill material behind it. The subject encroachments have been in place for nearly 50 years removal at this point in time would not serve any meaningful benefit to the beach resources.

Public Access:

Lateral public shoreline access may be slightly improved if the subject encroachment is removed but the minor improvement may be offset by the erosion of dirt fill and debris onto the public beach by the subsequent failure of the remaining (not encroaching portions) of the subject structure(s). The encroachments serves as an integral part of the whole structure that provides stability and retention of the fill material behind it. In addition there is no public shoreline right of way identified in the area.

Affect on Adjacent Properties:

Removal of the subject improvements would have a negative effect on the adjacent parcels due to potential for flanking, scour and erosion of the dirt and fill behind the wall. The effect of removing the subject improvements would place an unnecessary risk to the seawall, the landward dwelling and the surrounding properties and not provide an appreciable gain in beach area.

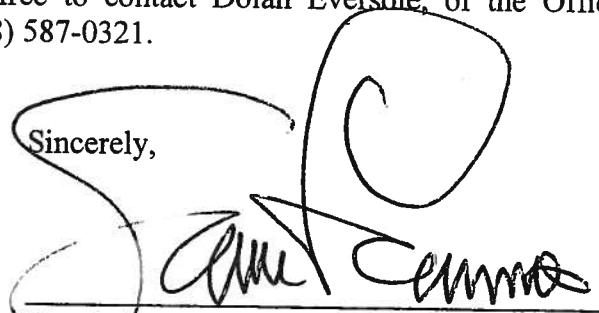
Upon review and careful consideration of the information gathered on this case, OCCL staff have evaluated the above factors including the existing natural and recreational resources. The OCCL has determined that allowing the encroachments to remain through the issuance of an easement for the subject improvements would be a practical and balanced response, have minimal impact to marine resources and would not interfere with the existing public access. **Therefore, the DLNR has no objections to an easement request being processed.**

Pursuant to Chapter 171 Hawaii Administrative Rules (HAR), you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a fine for the encroachment.

Please contact the DLNR, Land Division at (808) 587-0430 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding this property. If you have any questions, please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at (808) 587-0321.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Sam Lemmo', is written over a horizontal line.

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Chairperson, Oahu Board Member, Land Division, City and County DPP

Figure 1. Site Map and Ground Photos

